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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,654	12/05/2003	Michael E. Seitz	MTC 6634 1; 40-21(3584)B	8454
321 7590 SENNIGER POWERS LLP 100 NORTH BROADWAY 17TH FLOOR ST LOUIS, MO 63102	03/23/2011			
EXAMINER				
FRAZIER, BARBARA S				
ART UNIT		PAPER NUMBER		
1611				
NOTIFICATION DATE		DELIVERY MODE		
03/23/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/728,654

**Applicant(s)**

SEITZ ET AL.

**Examiner**

BARBARA FRAZIER

**Art Unit**

1611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 March 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:  
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
b) ☐ They raise the issue of new matter (see NOTE below);  
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).  
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-5,9,11,12,17-36,40,42,43,48-69 and 94-96  
Claim(s) withdrawn from consideration: 6-8,10,13-16,37-39,41,44-47 and 97-99

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Ashwin Mehta/  
Primary Examiner, Art Unit 1638

/B. F./  
Examiner, Art Unit 1611

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are not persuasive for overcoming the rejections. Applicant's proposed amendment filed 3/7/11, wherein the auxiliary amine is different from the primary amine (it appears Applicants intended to write, "principal amine"), has been entered; however, the subject matter wherein the auxiliary amine is different from the principal amine has been addressed in the previous Office action mailed 1/6/11, and Applicant's further arguments are still not persuasive for overcoming the outstanding rejections. In response to Applicant's arguments regarding the 112, first rejection, scope of enablement (pages 26-33 of Remarks filed 3/7/11), it is noted that, as stated previously, Applicant's data shows that not all ratios of principal amine to auxiliary amine (in this case, TETA to MXDA) result in half lives within the claimed range. Furthermore, since there is unpredictability with regards to half lives of pesticidal microcapsules, it is not clear which other principal amines and auxiliary amines within the classes of amines named, and in what ratios, would result in half lives within the claimed range. Additionally, Applicant's specification teaches that certain amines will increase the permeability of the microcapsules, while other amines will decrease the permeability of the microcapsules (e.g., see page 7, lines 1-6 of the specification and Figures 1B and 2). It is not clear which amines falling within the broad classes now named in claim 1 will increase or decrease permeability, and to what degree, absent undue experimentation. Applicant's arguments regarding crystallinity are not persuasive because Applicants do not correlate relative crystallinity with resultant half-life, or even if compounds with relative crystallinities exemplified would result in the half-life range as now claimed. Also see Response to Arguments in the previous Office action mailed 06 January 2011. In response to Applicant's arguments regarding the 103 rejection over Seitz, optionally further in view of Becher (pages 34-41 of Remarks), it is noted that Seitz still teaches a combination of isocyanates, and discloses suitable amines which may be used, such that one skilled in the art would find it obvious to select a combination of amines which would result in a microcapsule within the claimed half-life range, with a reasonable expectation of success. Applicant's arguments regarding the unpredictability of Seitz (response filed 3/7/11 and 3/16/11) are not persuasive because Seitz still teaches several examples of microcapsules which do fall within the claimed half-life range. Applicant's arguments regarding the Becher reference are not persuasive because Becher does teach that a mixture of amines may be used; see col. 6, lines 24-27 and claim 13. In response to Applicant's arguments regarding "other components" in Seitz, Seitz teaches varying isocyanates, as well as active ingredients and solvents, to control release rates; see col. 5, lines 1-37. Applicant's arguments regarding the supposed conflict between the 112 and 103 rejections are not persuasive because the obviousness rejection has a different basis than the enablement rejection; see page 21 of the Office action mailed 1/6/11. Applicant's comparison between the data in Seitz and the data of the claimed invention (supplemental response filed 3/16/11) are duly noted, but are not persuasive for overcoming the obviousness rejection because the claimed invention does not appear to be more predictable than the claimed invention, and the data actually presented in the Seitz reference demonstrates that, when the secondary component (in the case of Seitz, the second isocyanate) is varied, the same level of predictability is obtained as when the secondary component of the claimed invention (i.e., the auxiliary amine) is varied (compare Figure 1 of Seitz with Figure 2 of the claimed invention). Applicant's arguments regarding dependent claim properties such as Hildebrand Solubility parameter (pages 41-43 of Remarks filed 3/7/11) are not persuasive because the properties relating to solubility would be present in the microcapsule and formulations of Seitz et al., given the fact that the microcapsule shell of Seitz et al. can be formed from the same components as those taught in the claimed invention.